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THE FUTURE OF LABOUR LAW IN POLAND – SELECTED ISSUES¹

1. Polish labour law has undergone huge transformations over the last few decades. They were caused by entirely different underlying reasons. The first wave of fundamental changes was associated with the period of political transformation that began at the turn of the 80s and 90s of the last century. Their aim was to free labour laws of all that was due to the impact of the communist ideology and the practice of real socialism. Although it does not appear that this goal was fully realized, it is hard not to admit that, as a result of these changes, the standards of this area of law have become far closer to the standards in force in democratic countries and the principles of market economy. The second phase of fundamental changes in Polish labour law has occurred in connection with the accession to the European Union. The necessity to adapt the existing regulations to European law was expressed in the amendment to the Labour Code (e.g. in relation to equal treatment of employees, transfers of business, content of an employment contract, hiring employees delegated to work in the area of non-EU countries, working time, annual leaves) and in the adoption of completely new laws (e.g. the Act on Particular Rules of Terminating Employment Relationships with Employees for Reasons Not Related to the Individual Employees, the Act on Protection of Employees' Claims in the Event of Insolvency of Employers, the Act on Informing and Consulting Employees). Polish labour law has not avoided the confrontation with the recent economic crisis. This phenomenon spawned a considerable dispute over the answer to the question about the future of this area of law and two extreme views on the subject emerged. On one hand, it is argued that labour law, with its far-reaching social security guarantees and protection over employees, not only does not facilitate the recovery from the crisis, but actually it is a source of economic disruption, which includes the thesis that it generates unemployment. The demands for the liberalization of labour law, increasing its flexibility, or even deregulation are the inevitable consequence of this attitude. In part, this has been reflected in the episodic Act of 2009 on Mitigating the Effects of the Economic Crisis for Employees and Entrepreneurs. On the other hand, there is a view that the excess of liberal solutions leads to the impoverishment of the new generation, which is characterized by the emergence of a

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new social group called precariat, namely persons who mainly bear the consequences of increasing the flexibility of employment law. This manifests itself in moving away from the typical employment, whose archetype is a full-time employment contract concluded for an indefinite period of time, to employment not giving a guarantee of durability, often casual, which is deprived of many attributes of social protection both in the individual and collective dimensions. Being aware that the discussion about the future of labour law in Poland includes many other aspects, it seems that the most significant ones are responding to the trend towards the replacement of the indefinite employment with precarious employment, which takes on a variety of legal forms, as well as answering the question what role in these new realities trade unions should play.

2. Poland is among those European countries where the scale of the phenomenon of departing from indefinite employment is particularly large. Although there is no comprehensive and fully reliable statistical data, it is estimated that the percentage of employment contracts concluded for an indefinite period of time continues to decline². In recent years, only approx. 55% of people are employed on such basis. Almost every third person (approx. 31%) is employed under either a contract concluded for a definite period of time, or a civil law contract (particularly a mandate contract and a contract for specific work) or is self-employed (often this form of work is imposed by the employer). Therefore this means that almost 5 million people are not beneficiaries of the rights of employees who concluded employment contracts for indefinite duration. Given that the latter are the main addressees of the standards of protection of labour law, it leads to the conclusion that a large group of employees falls within the more and more widening peripheral areas of the subject matter of this field of law, or beyond them. Civil workers and the self-employed do not have employment status even to this modest extent which is the share of employees hired for a definite period of time. Approx. 8% of Poles perform their jobs on the basis of these typical “junk” contracts, as they are quite commonly known. Yet this phenomenon becomes even more observable when we consider the sectors of employment and the age categories of employees. As an example one might point to security industries where employment on the basis of civil law contracts dominates, and to persons under 25 years, among which only one in five performs work under an employment contract concluded for an indefinite period of time.

2.1. Looking at the future of Polish labour law from the perspective of statistical data quoted above illustrating some worrying phenomena on the labour market, it is necessary to address at least two issues. The first is the way in which employment based on definite duration employment contracts is treated. It must be firmly stated that it cannot be regarded as employment worse than that based on employment contracts for an indefinite period of time. Thus, employees who are parties to definite period employment contracts cannot be second-class employees. It seems that a different than expected

² Some idea of the scale of the phenomenon results from the data cited in two studies: *Employment in National Economy in 2013.*, Central Statistical Office, Warsaw 2014, p. 21 et seq., and *Social Diagnosis 2013. Conditions and quality of life of Poles. Report* (ed. J. Czapiński and T. Panek), Warsaw 2014, p. 143.

picture of employment for definite duration is burdened with a kind of original sin of Polish labour legislation. At the time of Labour Code enactment the need to indicate the conditions and objectives justifying the use of fixed-term contracts was not recognised except for probationary employment contracts whose purpose resulted from the name itself. The employment contract for a definite period of time was regulated as one of the contracts of employment, which was left available for future contractors. From this perspective the employment contract for a definite period of time became an alternative to indefinite contracts, detached from the socio-economic reasons for its use. Therefore, not only were these reasons not indicated, but also the limit of its duration. In these legal circumstances, employment contracts for a fixed term were often concluded in place of indefinite period employment contracts. The scope of their application was determined primarily by the needs of the stronger party to the employment relationship, namely the employer. Errors committed by the legislator in connection with the regulation of the conditions of termination of fixed-term employment contracts were conducive to abuse of this employment basis. These include the exception to the rule that such agreements cannot be terminated in the course of their duration and should be performed for the time for which they were concluded by the parties following their intention, unless there are circumstances giving rise to termination of contract without notice. The adoption by the legislator of admissibility of termination of employment contracts concluded for the period of time longer than six months if the parties entering into agreement foresaw such a possibility had to lead to abuses resulting from the predominance of employers. This regulation has become a convenient opportunity to circumvent the rules on the protection of the relationship of employment for indefinite period of time. Other regulations of the Code also encouraged such abuses and above all the lack of obligation to justify the termination of fixed-term contracts, a much shorter period of notice not related to seniority, as well as the lack of a clear limit to the period for which these agreements could be concluded.

The changes made at a later time in the legal regulation of employment contracts for a definite period of time aimed at minimizing the negative effects of these arrangements. However, they did not remove their initial defects. Among such changes one should certainly mention different forms of limitations to the conclusion of consecutive agreements of this kind. Also, in the rulings of the Supreme Court there were attempts to oppose the unrestricted freedom in determining the duration of those agreements. What is especially important here is the 2005 judgment in which it was assumed that “the conclusion of the employment contract for definite long-term period of time with admissibility of its earlier termination within a two weeks’ notice may be classified as a circumvention of labour law provisions, its socio-economic objective or the principles of community co-existence.” There is no doubt, however, that the impetus for major changes was the judgment of the Court of Justice of the European Union of 13 March 2014. (Case C–38/13), in which the regulation about the differentiation of the periods for termination of agreements for an indefinite period and fixed-term was disputed, and in particular the separation of their length in the latter case from seniority in the enterprise, which raises concerns from the point of view of the principle of equal treatment of employees. With regard to the incompatibility of Polish regulations with Council Directive

90/70 / EC on fixed-term work the European Commission also commenced the proceedings. As a result, the Act amending the Labour Code has recently been adopted by the Parliament. It introduced a maximum duration of employment contracts for a definite period of time and the total period of employment on the basis of contracts concluded between the same parties. It cannot be longer than 33 months with a limit of three possible renewals. Moreover, the situation is acceptable in which it is possible to derogate from these rules with the serious limitation that the conclusion of a fixed-term employment contract in a particular case “serves to meet a real temporary need and is necessary in this regard in the light of all the circumstances of the conclusion of the contract.” Apart from this, the rule of impossibility to terminate fixed-term employment contracts was repealed. Therefore it will be possible to terminate any labour contract, not only for an indefinite period of time, but also for a definite period of time, and the same rules will be applied to determine the period of notice.

It is hard not to admit that the introduction of the above-mentioned changes to the rules of the Labour Code should be seen as a dam against the abuse of employment contracts for a definite period of time. But the most important in counteracting the treatment of these contracts as creating second-class employment is clearly linking their conclusion with the need on the part of either employee or employer, which is justified by socio-economic reasons. It is reflected in the newly enacted legislation, but only to the extent where some exceptions to the limitation of the duration of such contracts, or of the permitted number of their renewals can be made. It seems, however, that making the conclusion of employment contracts for definite period of time dependable on the occurrence of an objective reason justifying the need for their use should be a rule, complemented possibly by some restrictive regulations. Only in this way it would be possible to effectively create legislation, in which a fixed-term employment would not be an alternative to indefinite employment, and therefore could not be considered as inferior, less valuable employment. It would just pursue other goals important for the parties to the employment relationship. More serious doubts can be raised in relation to the provision under which it is entirely possible to terminate a fixed-term employment contract. The regulation appears to clash with the essence of these agreements, which boils down to the guarantee of employment for the time for which the contract was concluded following the intentions of the parties.

2.2. The second issue, which with more and more power affects the Polish labour market, is the replacement of employment under employment-based contracts with employment under civil law contracts or with self-employment. The reasons for this phenomenon, as in the case of replacement of employment contracts for an indefinite period of time with fixed-term employment-based contracts, are essentially economic. Civil-law contracts (self-employment) generate labour costs considerably lower than those of employment under labour contract, meaning a lower level of employment stability, and removing the protection of trade unions. In other words, although the social status of workers under civil law contracts (the self-employed) is similar to the status of employees, they are not beneficiaries of labour laws, addressed only to the parties to the employment relationship created under labour law.

In assessing the phenomenon under discussion it is difficult to disregard the fact that conclusion of civil law agreements or self-employment have a double face. In many cases, it is characterized by appearance, and in fact they are used to conceal the actual employment-based jobs. The provisions of the Civil Code themselves state that the contract concluded for appearance is invalid, and the validity of the contract concealed should be judged on its properties. The Labour Code regulation is only the confirmation of this adjustment, and from this regulation it is clear that employment on “employee” terms is based on an employment-based relationship, regardless of how the parties named the agreement they concluded. Quite another matter is the assessment of measures provided in the existing labour law for the prevention of this undesirable phenomenon. Its scale proves the fact that labour law in its current form promotes the attempts to apparently conclude civil law contracts of employment in order to conceal an employment-based relationship. Moreover, it has yet another interesting aspect. Concealing an employment-based relationship, no matter what it is called, under the cover of civil employment demonstrates the attractiveness of the former. Therefore, if employment contracts and civil law agreements were accompanied by similar costs borne by employers, and similar social charges, they could compete with each other effectively.

This last statement is of particular importance in all those cases where the practice of using civil law contracts as the basis of employment is not equivalent to employment-based relationship. These agreements respect their characteristics resulting from the provisions of the Civil Code. Therefore they correspond to the definitional characteristics assigned to them by the legislator. Despite this, for many people work performed under these agreements has similar goals compared to the work performed by employees under contracts of labour law. Thus, it gives a similar social status and it is performed constantly, being the only or at least the main source of income. However, for a large group of people in employment under the civil law contracts it is not a satisfactory status, as they are not entitled to certain benefits whose beneficiaries are employees, they have no legal right to leave, and the legislation on working time, on minimum wage, on protection of remuneration for work and many others do not apply to them. In particular, their employment is not provided with any guarantee of stability. Therefore we actually deal with employment of inferior category, the undertaking of which can only be explained by a difficult situation on the labour market, which does not promote job seekers. They have to make do, as a result, with the working conditions dictated by employers.

All this raises a fundamental question about the measures to be taken in order for these “junk contracts” not to win in the competition with labour contracts. Certainly, one can imagine various scenarios dictated by economic or social reasons. In both cases they are related to the need to re-revise the boundaries between labour law and civil law. Using purely economic arguments it could be stated that this is not the low level of legal protection under employment of civil law type which is the reason to avoid labour contracts in favour of civil law ones. On the contrary, it is too far-reaching a protection of workers which constitutes an excessive burden for employers, distorting market signals and slowing economic growth. Therefore, a dam against the expansion of labour law should be erected, or shifting its borders should be considered in order to make some room for the empire of civil law. A less radical proposal would be to verify the protective standards

of labour law. Making concessions in this matter in favour of employers would create an employment-based relationship, as it is often claimed, more attractive to them, thereby reducing the tendency to opt for civil law contracts.

This kind of vision of the development of labour law, namely preserving the state of employment while reducing the burden and constraints that employers associate with employment, although from the economic point of view endowed with considerable power of persuasion, it is unacceptable for employees and the trade union representing them. For obvious reasons in their case social considerations are critical. Recognising the same reason for employers' avoidance of employment-based contracts in favour of civil law contracts associated with unequal scope of legal protection and the protection afforded by the trade unions, radically different ways of preventing this phenomenon are proposed. Their essence is associated with the expansion of labour law understood in various ways, the result of which would be to provide the people who work under civil law contracts (the self-employed) with the protection of employment standards that are applicable to employment-based relations.

It would be difficult not to admit that the tendency to extend the subjective scope of labour law is in conflict with a long-established view that labour law contains rules concerning subordinate work. The name of this area of law does not indicate this explicitly. As it is assumed, the limitation of labour law only to subordinate employment-based relations is a traditional conventional limitation which originates from the conviction that for the historical and social reasons they are the ones that require special protection³. Historical and socio-economic factors also conditioned the concept of subordination itself. Therefore its understanding needs to be somewhat dynamic. Therefore, if we confined ourselves to the terminological convention that was created during the birth of labour law, it would not be possible to reasonably consider the inclusion within its scope of not only civil contracts, but also of these legal relationships accompanying the performance of work, in which it is difficult to talk about traditional subordination, although dependence on the employing entity occurs there in one form or another. The classic form of subordinating an employee in the process of performing work was sufficient in regard to the image of an employee performing jobs of uncomplicated nature, rather physical than those connected with his or her intellectual capacity, not requiring extensive and specialised knowledge, but requiring direct supervision provided by superiors on behalf of an employer. Modern forms of dependence are far more complex and sophisticated. This is particularly related to the so called atypical forms of employment, managerial employment, or freelancing. Maintaining the legal relationship under which this type of work is performed within labour law requires re-evaluation of ideas on subordination. They must take into account that today the degree of workers' autonomy in carrying out work increases, which does not necessarily have to exclude the existence of any forms of dependence on the employing entity. An attempt to tackle these new challenges is the concept of so-called autonomous subordination, which is gaining followers in the doctrine of Polish labour law and court rulings⁴.

³ S. Grzybowski, *Wstęp do nauki prawa pracy*, Cracow 1947, p. 24.

⁴ Cf., inter alia, L. Mitrus, *Podporządkowanie pracownicze jako zmieniająca się cecha stosunku pracy* (in:) *Współczesne problemy prawa pracy i ubezpieczeń społecznych* (ed. L. Florek, L. Pisarczyk, Warsaw 2011, p. 123 ff.

The recognition that the distinguishing feature of an employment relationship is subordination of employee to employer does not have to lead to a change in the subjective scope of labour law, as far as it does not abandon this feature distinguishing this labour law relationship from other legal relations under which work is performed. It is only re-defined, taking into account the changes in the modern labour market. However, there is an obvious limitation, which cannot be exceeded in the search for a new understanding of subordination. Work performed in the conditions of independence, which is the hallmark of civil law contracts, cannot be called subordinated work. The inclusion of civil employment in labour law would therefore mean the adoption of a completely different terminological convention, detached from historical roots. As a result, another criterion to isolate this area of law should be found.

The treatment of subordination as such a criterion in a typical situation was associated with the social status of a person who performed a job. An employee was the weaker party to the employment relationship, which determined the protective function of civil employment. On the other hand, the rules of this area of law were also applied to people in a subordinated employment relationship for which the employee bond had incidental, secondary nature, especially in comparison to other performed roles which primarily delineated their financial and professional status⁵. However, using the attribute of employee, they were beneficiaries of protective regulations of labour law despite such a status. The motives of applying labour laws to them were, as a result, merely of formal nature and were not directly related to the axiology of this area of law. There is no doubt that the nature of labour law was shaped by the dominant group of subordinated employees for whom remaining in the employment relationship determined also their social position. On the other hand, the situation of persons performing work independently on the basis of contracts of civil law was quite different. That independence was in this case an intrinsic value providing the best protection of their interests. The principle of freedom of contract had to guard this independence. However, it must be admitted that such an image of entities which performed work under civil law contracts has become highly complicated. Certainly, this civilistic axiology of performing work (services) by independent contractors is sometimes sufficient, but more often the limitation to this axiology turns out to be unreliable. First of all, this independence becomes illusory, especially for those persons consistently performing work for the same contractor. Gaining an economic predominance those contractors are the ones who begin to dictate the terms of work, relying on the principle of freedom of contract. The lack of protective instruments characteristic of labour law produces the result that civil employment is seen as the worse employment category.

Considering the progressive process of loosening the criterion of subordination as a feature distinguishing labour law from civil law and, on the other hand, broadening the sphere of economic dependence of people performing work under civil law contracts, which creates some kind of impoverishment, it seems reasonable to ask about the future relationships between these two areas of law and the criteria of their delimitation. In the discussions on this topic ongoing in Poland it is most often agreed that there is a necessity

⁵ W. Szubert, *Zarys prawa pracy*, Warsaw 1976, p. 86.

to remove the odium of inferior employment from civil law employment. This is facilitated by the regulation included in the Constitution, according to which the state should provide protection of work, without distinction between the legal grounds for its performance. In this context the term “constitutional employee” is singled out, claiming that from the constitutional perspective the status of worker shall entitle anyone who performs gainful employment being in legal relationship with the entity for which he performs work. In this approach there is no reason for the differentiation between subordinated and unsubordinated employees⁶. It applies in particular to social human rights, the necessity of respecting which originates from the Constitution but also from international law⁷.

With all this in mind, it is sometimes proposed that labour law should not be limited only to the regulation of the legal status of persons who perform subordinated work, but it should also cover people performing independent work⁸. The extension of labour law to these individuals would be difficult to accept if it did not respect the differences in their social and economic status. In particular, one cannot disregard the fact that granting the protection afforded under this area of law is usually justified only for a certain category of people working on the same legal basis, instead of generally to all persons who are party to a specific contract under civil law, e.g. a mandate contract. It is not appropriate to recognise as the subject of labour law all those for whom independence is a real advantage, enabling them to best achieve economic and professional objectives⁹. Yet it cannot be questioned that there is a need to extend protection standards of labour law to individuals who, though formally without the status of workers, are in similar socio-economic circumstances. This is reflected in the conception of separation of employment law recently developed in the Polish doctrine, and of the adoption of a code of employment in the future¹⁰. The essence of this proposal is to preserve labour law which, as before, would cover subordinated employees, but which would be an essential component of a broader area of law – employment law. The latter would include protective provisions addressed to categories of workers other than employees. The rules on the granted protection founded on the same axiological bases would be common. However, detailed legal solutions would vary depending on the legal basis of performing work. Therefore, civil law contracts would not be included in the labour law. Social protection provided in the employment law would be applied to persons who perform work on the basis of civil law contracts, similarly but not identically to the protection enjoyed by employees. In this perspective, employment law would be the law “for people living by performing manual work who deserve to be under protection arising from this work and its scope and subject stem from the nature of the employment”.

⁶ A. Sobczyk, *Wolność pracy i władza*, Warsaw 2015, pp. 272–273.

⁷ A. Sobczyk, *Prawo pracy w świetle Konstytucji RP*, Volume I. *Teoria publicznego i prywatnego indywidualnego prawa pracy*, Warsaw 2013, pp. 298–299.

⁸ W. Sanetra, Uwagi w kwestii zakresu podmiotowego kodeksu pracy (in:) *Prawo pracy a wyzwania XXI wieku. Księga jubileuszowa Profesora Tadeusza Zielińskiego*, Warsaw 2002, pp. 305 ff.

⁹ A. Supiot, *Zatrudnienie pracownicze i zatrudnienie niezależne* (in:) *Referaty na VI Europejski Kongres Prawa Pracy i Zabezpieczenia Społecznego*, Warsaw 1999, p. 166.

¹⁰ M. Gersdorf, *Prawo zatrudnienia*, Warsaw 2014.

Although the key assumptions of the proposal outlined above are worthy of acceptance, it is not entirely convincing that for their adoption it is necessary to create a new area of law called employment law. The relevance of the name itself raises reservations. It suggests that “employment law” has a wider range of meaning than “labour law”, which seems to be a too arbitrarily imposed convention. First of all, it should be noted, however, that the axiology of social protection including in its scope also persons performing work under civil law contracts originates sufficiently clearly, as previously stated, from the Constitution and the norms of international law. Its transfer in the form of formulated principles of employment to the level of parliamentary legislation (to the code of employment) is an unnecessary creation of new entities. It is sufficient to maintain the existing subjective scope of labour law based on the new subordination formula of extending the application of some of its protection standards to persons providing work on a legal basis different from labour contract, taking into consideration the specific characteristics of a particular employment basis. This would mean, therefore, maintaining the principle of the prior scope of labour law and civil law while ensuring social protection to all those for whom it is justified. Without changing its nature civil law employment would cease to be the employment of inferior category. A special role in achieving this objective should be played by the changes in the collective representation of workers, which is discussed in the subsequent part of this study.

3.1. Under Polish law parties to collective labour relations are generally free to choose the organisational structure of trade unions (Art. 9 of TUA¹¹). This is due to the freedom of workers and employers to create organisations at their sole discretion, guaranteed under the ILO Freedom of Association and Protection of Right to Organise Convention (No. 87) of 1948¹². However, the legislator mentions certain trade union structures (i.e. enterprise trade union organisation, inter-enterprise trade union organisation, multi-enterprise trade union organisation etc.), assigning to them specific competences. Formally, this does not prevent the creation of other structures¹³. Nevertheless, the legislator’s assignment of specified competences to some collective organisations has a strong impact on the organisational structure of the union movement, since without the establishment of structures defined by the legislator the rights assigned to them cannot be used¹⁴.

The legislator attaches particular importance to enterprise trade union organisation and inter-enterprise trade union organisation to which the provisions related to enterprise trade unions should be applied under Art. 34 of TUA. Enterprise trade unions have the exclusive right to collective bargaining at the enterprise level (e.g. Art. 104 (2) of PLC,

¹¹ Act of 23.05.1991 on Trade Unions, O.J. 1991, No. 55, pos. 234 (follows as TUA). Article 9 of TUA states that “Statutes and trade union resolutions freely determine the organisational structures of trade unions. Only the statutory authorities of trade union structures with legal personality may contract property obligations.”

¹² International Labour Organization, No. 87 from 9.07.1948 r. concerning Freedom of Association and Right to Organize, O.J. 1958, No. 29, pos. 125.

¹³ Judgment of the Supreme Court of 15.10.1992, I PZP 35/92, OSNC 1993, No. 1–2, pos. 3.

¹⁴ Z. Hajn, *Zbiorowe prawo pracy. Zarys systemu*, WoltersKluwer 2013, p. 64.

Art. 77 (2) of PLC, Art. 241 (23) of PLC¹⁵) and to the representation of the collective rights and interests of employees in collective disputes at the level of workplace (Art. 2 of RCDA¹⁶). Fundamentally, only the establishment of an enterprise trade union organisation is associated with the powers to represent and defend employees employed in the workplace, for example the authorisation to consult the notice of the intention to terminate the employment contract concluded for an indefinite period of time and to consult the intention to terminate employment without notice (Art. 38 of PLC, Art. 52 and 53 of PLC), to consult the intention to reject employee's objection related to employer's application of penalties within employees' liability for maintaining order (Art. 112 of PLC), to express consent to the dismissal of a woman during pregnancy or during maternity leave (Art. 177 of PLC). The Trade Union Act provides detailed regulations of the protection of the employment relationship stability of a trade union activist. Under Article 32 point 1 of TUA an employer cannot terminate with or without notice an employment relationship with a trade union activist without the approval of the board of the trade union organisation. The same procedure is required in relation to the notice of modification of work or remuneration conditions. TUA also regulates in Article 31 the right of board members of an enterprise trade union organisation to be released from the obligation to perform work with the right to remuneration in order to carry on trade union activities¹⁷. Also, the power of trade union to request an employer to provide the premises and technical facilities necessary for performing trade union activity in the work establishment is provided at the enterprise level (Art. 33 of TUA).

Under Article 15 of TUA a trade union and its organisational units acquire legal personality on the day of registration if it is stated in the trade union charter. As a consequence, within one legal entity, there may be different organisational units with separate legal personality and privileges. This adjustment directly affects the structure of collective labour relations¹⁸. Several powers in the area of collective industrial relations can be realised only through enterprise trade unions as the powers of multi-enterprise trade union organisations are restricted to the conduct of collective bargaining at multi-enterprise level (Art. 241 (14) of PLC)¹⁹. If the multi-enterprise trade union organisation wants to use all the powers of a trade union, it needs to develop its internal units in the form of

¹⁵ Act of 26.06.1974 – Labour Code, O.J. 1974, No.24, pos. 141 (follow as PLC).

¹⁶ Act of 23.05.1991 on the Resolution of Collective Disputes O.J.1991, No.55, pos.236. (follow as RCDA).

¹⁷ The number of trade unionists permanently exempt from the obligation to work depends on the number of members of the trade union organisation or the number of members of managerial board established on behalf of the employer. In addition, the employee has the right to exemption *ad hoc* from work while retaining the right to remuneration for the time necessary to carry out trade union activities resulting from his union function if such activity cannot be made in time off from work (Art. 31 of TUA).

¹⁸ P. Grzebyk, *Liability in Damages for Strike in the Polish Labour Law*, (in:) *Derechos de Negociación Colectiva ante una Economía Globalizada*, X Congreso Europeo de Derecho del Trabajo y de la Seguridad Social, Asociación Española de Derecho del Trabajo y de la Seguridad Social, 2011, p. 5, <http://aedtss.com/images/stories/documentos/congreso-europeo-comunicaciones/2/208grzebyk.pdf>

¹⁹ Multi-enterprise trade union organisations which operate in Poland have regional or sectoral nature. Usually they either operate as national trade unions of a sector or associate employees belonging to a specific profession, for example the National Trade Union of Physicians.

enterprise trade unions present in various workplaces. As a result, trade unions are not interested in the manifestation of their activity at the multi-enterprise level. The concentration of trade unions' competences at the enterprise level reduces the development of trade union organisations at the multi-enterprise level and leads to the systemic decrease of the importance of multi-enterprise collective bargaining,²⁰ as well as to the decentralisation of union structures.

In this respect Polish legislation infringes Articles 2 and 3 of the Freedom of Association and Protection of the Right to Organise Convention ratified by Poland in 1956²¹. Although Art. 1 and 9 of TUA implement Art. 2 and 3 of the ILO Convention No. 87, guaranteeing that a trade union is a self-government organisation, under Polish law a trade union cannot represent the rights and interests of employees without its internal structure in the form of an enterprise trade union organisation. As a result, a trade union is deprived of the freedom to choose its internal structure and the ability to flexibly adapt its structure to the socio-economic changes²². Such accumulation of powers in relation to enterprise trade union, in fact, eliminates also other forms of union representation in the workplace (e.g. multi-enterprise trade union delegates in the workplace).

The marginalisation of multi-enterprise trade union structures has contributed to the growing importance of the central (national) trade union structures. Currently, at the national level trade unions operate in the form of associations of trade unions (OPZZ, FZZ) or unified national trade unions ("Solidarność") with powers to consult and co-create legal regulations within the scope covered by the tasks of trade unions. National trade unions supplement the deficiency of the general rules of collective agreements by their influence on statutory law. This situation has led to the formation of a number of detailed regulations of statutory rank, in return limiting the scope for collective bargaining at enterprise and multi-enterprise level. The result is a bipolar system of collective labour relations: at the enterprise level and central level, while the intermediate level (multi-enterprise) does not have a great significance²³.

Industrial relations shaped in this way, with the domination of enterprise trade union, deprive people performing work under civil law contracts or self-employed of the possibility of being protected. This is a consequence of the provision of Article 2 of TUA, due to which a trade union can be created and joined only by entities exhaustively stipulated in section 1, i.e. employees, as well as members of agricultural production co-operatives and individuals who perform work under an agency agreement if they are not employers. Next, Art. 2 §2–7 of TUA specifies the categories of people entitled to join trade unions

²⁰ J. Czarzasty, *Poland – Development in social partner organisations: employer organisations*, www.edurofound.europa.eu/eiro/studies/tn0910049s/pl0910049q.htm (access: 25.06.2015). According to the information from the Ministry of Labour and Social Policy, the number of employees covered by multi-enterprise collective agreements dropped from 1 million in 2003 to 390 thousand in 2012. (see: www.dialog.gov.pl/dialog-krajowy/uklady-zbiorowe-pracy/)

²¹ Z. Hajn, *Ustawowy model organizacji polskiego ruchu związkowego i jego wpływ na zbiorowe stosunki pracy*, (in:) M. Matey-Tyrowicz, L. Nowacki, B. Wagner, *Prawo pracy a wyzwania XXI-go wieku*, Warszawa 2002, p. 437. Contrary opinion: J. Wrątny, *Związki zawodowe a niezwiązkowe przedstawicielstwa pracownicze w gospodarce posttransformacyjnej*, Warszawa 2010, p. 50–52.

²² Z. Hajn, *Ustawowy model...*, op. cit., p. 437; P. Grzebyk, *Legal position...*, op. cit., p. 79.

²³ Z. Hajn, *Zbiorowe prawo pracy...*, op. cit., p. 69.

in cases and on conditions specified by a trade union charter. In fact, these people are deprived of the right to establish new trade unions. Such restrictions apply to people engaged in home based work (§2), pensioners (§3), the unemployed (§4), individuals seconded to work establishments to serve their substitute military duty (§5), officers of the police and others referred to in section 6 of Article 2 of TUA²⁴ and other people associated with the workplace (§7). The Trade Union Act, realizing the principle of trade union self-governing, leaves trade unions free to shape in their charters the requirements necessary for joining the organisation, though within the subjective limits specified in Article 2 of TUA.

Therefore, current provisions of the Trade Union Act do not include the collective rights of those remaining in the employment under civil law. In particular, such right cannot be derived from Art. 2 §7 of TUA which stipulates that the freedom of association and the right to organise in trade unions shall apply to other persons related to workplace. A comprehensive interpretation of the provisions of the Trade Union Act should take into account Article 25 (1) of TUA, which is *lex specialis* in relation to Article 2 of TUA. Under Art. 25 (1) of TUA a trade union organisation enjoys the rights of an enterprise trade union if it has at least ten members. *A contrario* enterprise a trade union which does not have at less ten members is deprived of its powers²⁵. At the same time the number of ten enterprise trade union members can only include the enumerated categories of people mentioned in this provision, which substantially does not include people performing work under civil law contracts or self-employed. Article 25 (1) of TUA ignores people remaining in employment on the basis of civil law contracts, denying them the freedom of association and the right to organise in trade unions. As a result, in their union activities trade unions focus on representing the rights and interests of workplace employees constituting the basis of their membership. In addition, the powers of trade unions, i.e. the protection of employment relationship or releasing management board members from work, are related to trade union activists remaining in employment-based contracts. For these reasons, the statutory model of collective labour relations is adapted to the employment-based one, characterised by increased stabilisation compared with the civil law employment²⁶.

In order to adjust the legal regulations of collective labour relations in Poland to people who perform work under civil law contracts and to self-employed some changes are required in the subjective scope of the right to organise, in the structure of union movement and in the model of representation. First of all, the right to organise in trade unions, as defined in Art. 2 of TUA, needs to be extended to people providing work on the

²⁴ Art. 25(1) § 6 of Act on Trade Unions guarantees the freedom of association in trade unions to Police Officers, Border Guard, the Prison Service and the State Fire Service firefighters, as well as employees of the Supreme Chamber of Control, with limitations resulting from separate regulations

²⁵ Regulation contained in Art. 25(1) of TUA can be seen as a restriction on freedom of association; see: Z. Masternak, *Prawo pracy. Zarys wykładu*, (in): Z. Kubot, T. Kuczyński, Z. Masternak, H. Szurgacz, Warszawa 2008, p. 361.

²⁶ E. Podgórska-Rakiel, *Gwarancje zatrudnienia działaczy związkowych wykonujących pracę na podstawie umów cywilnoprawnych*, Uniwersytet Gdański 2014, not published, p. 165.

basis of civil law²⁷. The current normative formula does not reflect the needs existing in practice. It is also contradictory to Article 2 of ILO Convention No. 87 and Article 59 §1 of the Polish Constitution, as it was stated by the Polish Constitutional Court in its judgment of 2 June 2015. As a result, the Trade Union Act should be amended in the direction of extending the right to organise to people who perform work on the basis of civil law contracts and self-employed.

There is no doubt that not all legal relations under civil law should be the subject of the discussed changes in labour law. However, the criteria for distinguishing between civil law relations which should be covered by employees' rights, including the right to organise, from other civil law relations in which work is performed, while maintaining the axiology of civil law, are debatable. As rightly pointed out in literature, the right to organise should be extended only to legal relations of a similar nature and functions to the employment-based relationship. In order to distinguish them from typical civil law relations the criterion of duration of civil law contract under which the service is performed (a minimum of six months), the necessity to remain in economic dependence on one contractor (employer) and the nature of the contract (the subject matter of the contract is the obligation to perform work diligently and carefully instead of the specified result of work) are indicated. In case of the self-employed it is rightly proposed that only people performing work for a single employing entity and who are not employers themselves should be covered by the scope of the amended right to organise²⁸. The idea to grant the freedom of association and the right to organise to people performing work within the framework of civil law employment and self-employment has a significant impact on the shape of the proposed changes in the sphere of industrial relations in Poland.

First of all, there is a need to verify the legitimacy of trade union monopoly in shaping collective labour relations in order to grant working people the freedom to choose the form of their representation before their contractor (employer). References are made to three possible ways of development of collective labour law in this direction. People remaining in employment based on civil law contracts and self-employed could associate: a) in enterprise trade unions, b) directly in multi-enterprise trade unions and c) in organisations established specially for this purpose. The choice of each of these options entails a number of concerns.

Association of people working under civil law contracts in enterprise trade unions is linked with the fear that civil law contracts are not conducive to long-term trade union membership in the structure of enterprise, as workers associated in enterprise trade unions will be forced to change enterprise trade union for each subsequent contract with the new contractor (employer). However, it should be noted that granting the freedom of association and the right to organise to people working under civil law contracts with specified duration should not cause fluctuations of union members on a scale larger than in the case of employees who work under the employment-based contracts concluded for a definite period of time. As a consequence, those remaining in employment under civil

²⁷ Under the current legal regulation among people employed under civil law contracts only people performing home-based work have a limited right to organise in trade unions (Art. 2 section 2 of TUA).

²⁸ K. Baran, *O potrzebie nowelizacji prawa związkowego*, MoPR 2013, No. 11, p. 568.

law contracts should retain the ability to exercise their right to organise in a manner of their own choosing, including association in enterprise trade unions, whereas banning them from establishing or joining the existing enterprise trade union in the postulated legislation would be incompatible with the rule of self-governing trade unions²⁹. Additionally, such a solution may lead to multi-dimensional benefits. In the face of the current crisis of the union movement in Poland it may paradoxically lead to the strengthening of the role of trade unions in shaping the working conditions in favour of both employees and people who work under civil law contracts.

The second way to exercise the freedom of association and the right to organise by people remaining in civil law employment and self-employment is their association directly in multi-enterprise trade unions. In this case, the multi-enterprise trade union which works through its enterprise representatives on behalf of and within the limits of the authorisation of this organisation should be a partner for employers in collective bargaining and other union activities³⁰. However, although this idea is worth further development, it creates a number of practical problems. Multi-enterprise trade union, in accordance with Article 238 of PLC is an organisation which includes national trade unions, a federation of trade unions and national confederations of trade unions. The direct association of workers employed under civil law contracts in large multi-enterprise organisations raises some doubts in relation to the organisational structure of such an organisation and its capability of exercising the powers of an enterprise trade union, taking into consideration the fact that within the internal structure of a multi-enterprise trade union applied at the company level enterprise trade union organisations co-exist with other forms of unionisation or they replaced enterprise trade unions. As a consequence, the adoption of such form of exercising the right to organise by people who perform work under civil law contracts would require changing the model of collective labour relations to end the monopoly of enterprise trade unions in representing workers at the enterprise level. Some practical problems indicated in the doctrine and related to the application of the idea of civil workers associating directly in multi-enterprise trade unions, e.g. what is the subject entitled to consultation with employer (contractor) his intention to terminate the contract (Art. 38 of PLC), seem possible to be resolved if individual and collective powers between internal entities of multi-enterprise trade unions are precisely delimited³¹. On the other hand, undoubtedly, an association of people performing work under civil law contracts in multi-enterprise trade union would strengthen their negotiating position in relation to contractor (employer) and ensure continued membership in the union. Therefore, such an organisation of collective labour relations brings significant advantages.

An alternative to exercising freedom of association by civil workers within trade unions is their association in union organisations established specially for this purpose³². Such an extra-enterprise structure could be an integral part of a larger extra-enterprise

²⁹ E. Podgórska-Rakiel, *Gwarancje zatrudnienia...*, op. cit., p. 165.

³⁰ Z. Hajn, *Związkowe przedstawicielstwo pracowników zakładu pracy w Polsce – ewolucja, stan obecny, przyszłość* (in: *Związkowe przedstawicielstwo...*, op. cit., p. 50; Z. Hajn, *Zbiorowe prawo pracy...*, op. cit., p. 70.

³¹ E. Podgórska-Rakiel, *Gwarancje zatrudnienia*, op. cit., p. 166.

³² *Ibidem*.

union organisation or independent extra-enterprise union organisation and, similarly to enterprise trade union or inter-enterprise trade union, it could include one or more contractors employing members of this organisation, with the reservation that the headquarters of its managerial board will be the company, since its members do not remain in long-term employment relationships with any partner. This would make it possible to avoid the problems associated with the change of union membership in the event of a change of contractor. In such a situation, the managerial board of an extra-enterprise union could at best inform the new contractor of the fact that the workplace has fallen within the scope of the activity of an extra-enterprise union organisation. Fundamentally, an extra-enterprise union organisation should include people who are in employment based on civil law contracts although, due to the need to preserve the principle of self-governing of trade unions, it is difficult to rule out the possibility that this structure will also unite employees. The concept of an extra-enterprise trade union organisation constitutes the proposal to introduce to the legal system an institution which has no legal tradition in the Polish collective labour law. Given the weakness of the union movement in Poland, there are doubts whether the establishment of a new institution favouring greater decentralisation of collective labour relations is needed. Moreover, the effectiveness of such an organisation in connection with its detachment from the workplace and ignorance of the realities is doubtful. Providing an extra-enterprise trade union with appropriate technical and organisational conditions for its functioning outside the workplace could also be problematic. For these reasons, taking into consideration the weak condition of the union movement³³ and its decentralised structure with the traditional accumulation of union powers at the enterprise level one should be inclined to adapt the existing solutions to the new needs in order to concentrate and strengthen the trade union movement rather than take new solutions enhancing its decentralisation.

3.2. The use of a mixed corporate and representative model of representation of the rights and interests of employees is a consequence of the concept of unionism adopted under the Polish collective labour law, characterised by accumulation of union powers in the structure of enterprise trade union. In the corporate model of representation, in principle, a trade union represents the rights and interests of its members (the model of particular representation). On the other hand, the representative model of representation assumes that a trade union represents all employees in the workplace in terms of their collective rights and interests, regardless of their memberships in trade unions (the model of general representation). Therefore, the criterion for distinguishing the powers of a trade union in representing the rights and interests of employees is the nature of the subject of such representation. Individual cases should be understood as those which are related to the rights and interests of a particular employee and they may be litigated before the courts, while the collective rights and interests are linked with concerns of some or all employees employed in the workplace and they cannot be litigated before the courts. The

³³ The degree of unionisation of workplaces tends to decline. In 1995 it was 25%, while in 2013 only 12%. See: www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Trade-Unions2 (Access: July 10 2015).

adoption of a mixed corporate and representative model of representation under the Polish collective labour law means that in individual cases trade union represents its members (Art. 7, paragraph 1 of TUA). This scope may be extended to employees who are not trade union members if they request protection and if trade union undertakes to protect their rights and interests before the employer (Article 7 section 2 and Article 30 sections 1–2 (1) of TUA). However, in collective cases trade union represents all employees in the workplace, regardless of their trade union membership (Art. 7, section 2 of TUA).

Collective labour law is based on the principle of trade union pluralism. This means that several trade union organisations can operate in one workplace. The model of general representation adopted in collective matters in a situation of trade union pluralism in the workplace leads to collisions resulting from the overlap of several trade unions powers to represent the same group of employees. These collisions are prevented according to the following rules stipulated in Article 30 § 3 and §4 of TUA as a result of establishing a common representation, conducting independent collective bargaining by each trade union acting in the workplace or limiting negotiations only to the representative organisations, i.e. those which meet the additional criteria related to the strength of the trade union, indicated in Articles 241 (25a) and 241 (17) of PLC.

The adoption of a mixed model of representation in collective labour relations does not mean that people performing work under civil law contracts or self-employed are provided with trade union's protection in principle. Art. 7 of TUA clearly states that the general protection covers all employees (remaining within the scope of activity of trade union), regardless of their union membership. As for particular protection, it covers employees who are members of trade union and unaffiliated in the trade union employees whose defence trade union undertook on the basis of an employee's request. The lack of the freedom of association and the right to organise in trade unions resulting from Article 2 of TUA in conjunction with Article 25 (1) of TUA excludes people in civil law employment and in self-employment from the subjective scope of possible trade union protection. In view of the need to extend the right to organise in trade unions to people remaining in civil law employment and self-employment, the question which representation model should be applied to them arises.

It seems that, as far as this issue is concerned, there should be no distinctions between the legal situation of employees and workers performing work under civil law contract as well as self-employed who are granted the freedom of association and the right to organise under the drafted amendment of collective labour law. A different opinion would imply that trade union organisation should confine itself to represent persons performing work under civil law contracts or self-employed for contractors (employers) only in individual cases (on the basis of particular representation.) As for collective demands, trade unions should refer them to law makers on behalf of workers performing work under civil law contract and self-employed, taking into account that their working conditions and pay depend on the future legislative solutions³⁴ and not on contractors (employers) with whom workers remain in legal relationships each time and who are not partners of

³⁴ M. Zieleniecki, *Prawa i obowiązki stron stosunku pracy – analiza najnowszych problemów prawnych*, paper at the seminar at the Supreme Court in Warsaw 20–21.04.2012.

trade unions in collective actions. However, this argument is equally true with regard to employees and people performing work under civil law contracts and therefore it should be rejected. As a result, there should be a call to adopt the mixed corporate and representative model of representation also in relation to workers performing work under civil law contracts and self-employed in the revised collective labour law. After the Constitutional Court's judgment of 2 June 2015 granting the people who are in employment based on the civil law contracts and self-employment the right to establish trade unions and to join the existing trade unions, the amendment of Article 7 of TUA within the scope described above would represent another step on the road to ensure the minimum standards of labour law for people employed under the civil law contracts and self-employed whose employment has similar nature, functions and conditions as those of people having employment-based jobs.

3.3. The choice of a mixed corporate and representative model for trade unions gathering people who remain in employment based on civil law contracts and self-employment has some important implications in the sphere of industrial relations because it allows these groups of workers to use the natural union instrument for shaping their pay and working conditions in the form of collective bargaining at the enterprise level and to be covered by autonomous legal regime organised on the basis of legal regulations negotiated by trade unions. The argument of unstable trade union membership considered in relation to frequent changes in contractors (employers) should not exclude the people employed on the basis of civil contracts from the minimum work standards established by collective bargaining.

Such an approach does not exclude the need to provide trade unions, which represent people performing work on the basis of civil law contracts, with the influence on the pay and working conditions shaped by the national and local authorities. The consultative competence related to the assumptions and drafts of legal acts in respect of trade union activities are provided for trade unions (Art. 19 of TUA). This means that the statutory authorities of trade unions which meet the criteria for representativeness of trade unions in the Tripartite Commission for Socio-Economic Affairs and regional social dialogue committees³⁵ have the right to give opinions on assumptions and drafts of legislation covering within their scope the competence of a trade union organisation. This instrument can play an important role in shaping the pay and working conditions of people employed under civil law and self-employed if the rejection of the position of trade union must be justified and a breach of the obligation to submit an act of local law for consultation with

³⁵ In order to be deemed to be representative trade unions national trade unions, national associations (federations) of trade unions and nation-wide (confederations) must meet all of the following criteria: 1) bring together more than 300,000 members who are employees; 2) work in the national economy entities whose primary activity is defined in the more than half of the sections of the Polish Classification of Activities (PKD), referred to in the regulations on public statistics. Employees' party to the Commission may invite to participate in the work of the Commission, in advisory capacity, the representatives of trade unions and trade union organisations which do not meet the above criteria (Art. 6 of Act from 6.07.2001 on Tripartite Commission for Socio-Economic Affairs and regional social dialogue committees, O.J.2001, Nr 100, pos. 1080).

trade unions constitutes a flagrant violation of the law and may result in its invalidity³⁶. It is noteworthy that the objective and subjective scope of the current wording of Article 19 of TUA meets the needs to grant the freedom of association to people employed under civil law contracts. This provision includes the right of trade unions to express their opinion not only in matters of individual and collective labour law, but also on wider social policy, whose provisions may have an impact on the lives of a broader category of working people³⁷. Therefore, it does not limit the competence of trade unions only to the legal status of employees. However, the Act of 6 July 2006 on Tripartite Committee for Socio-Economic Affairs and regional social dialogue committees requires the adaptation to new collective labour relations in the provision where it refers to “employees” (Art. 1 of the Act on Tripartite Committee for Socio-Economic Affairs). These concepts are too narrow, if the recommendation of the International Labour Organisation was to grant the freedom of association to all working people regardless of the legal basis of their employment.

The provisions of the Act of 23 May 1991 on Resolving Collective Disputes³⁸ also require modifications. Although under Art. 1 of RCD a collective dispute is defined as a dispute between employees and employers, in the following part of the provision the legislator applies the regulation also to other groups who have the right to organise in trade unions. Therefore, after applying the expected changes related to the enlargement of the freedom of association and of the right to organise to people performing work under civil law contracts, they will also be included within the scope of Art. 1 of RCD. However, the other party to the collective dispute needs to be re-defined. With regard to people performing work under civil law contracts and self-employed, it cannot be the term “employer” within the wording of Art. 3 of PLC³⁹. As it was indicated in the Report on the Mission of the ILO, which took place on 13–16 May 2014. in Warsaw, the counterparty to a collective dispute should be “employer or reliable authority.”⁴⁰ There is no doubt that the definition of the employing party to a collective dispute has to be expanded. It is necessary, for example, due to the need to ensure the transparency of the legal conditions of a strike, especially obscure in the case of labour relations of public service employees or administrative employment⁴¹. Defining the employing party is crucial in order to initiate a strike in relation to the competent entity, which is the condition of the lawful nature of

³⁶ Judgment of NSA of 19.12.1991, SA/Kr 1512/91, Wokanda 1992, No. 5, p. 21.

³⁷ J. Wrątny, *Komentarz do art. 19. Komentarz do ustawy o związkach zawodowych*, J. Wrątny, K. Walczak (ed.), C.H.Beck 2009, Legalis.

³⁸ Act of 23.05.1991 on Resolving Collective Disputes (RCD), O.J.1991, No.55, pos.236.

³⁹ Art. 3 of PLC: *An employer is an organisational unity with or without legal personality, as well as an individual, which employs one or more employees.*

⁴⁰ The International Labour Organization, Report of the Mission, 14–16.05.2014 r., Warsaw. The subject of the meeting was the adaptation of the Polish collective labour law standards to international law in front of the need to extend the freedom of association and right to organise to people performing work under civil law contracts and as self-employed. [www.opzz.org.pl/documents/10427/.../MISSION_REPORT_PL+\(2\).pdf](http://www.opzz.org.pl/documents/10427/.../MISSION_REPORT_PL+(2).pdf)

⁴¹ Not to recognise public authorities as a party to the collective dispute in the current Act on Resolving Collective Bargaining is contrary to Art. 7 and 8 of the ILO Convention No. 151 concerning the Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, and Art. 6 § 2–3 of the European Social Charter. Cf. M. Kurzynoga, *Warunki legalności strajku*, WoltersKluwer 2011, pp. 127–128.

the strike. The term “employer” as a party to a collective dispute is too narrow a category to cover all people who have the right to strike, which raised a number of practical problems. The term “reliable authority” as the subject of a collective dispute on employer’s side does not allow for a general statement that public authorities are a party to a collective dispute for people employed under civil law contracts and self-employed. The report of ILO experts from 2014 refers to “qualified entities” meaning their competence to make concessions and take decisions. Consequently, determining the relevant entity on the employer’s side in collective disputes depends on the type of employment. In respect of people in employment based on civil law contracts or self-employed it should be each contractor (employer).

Conclusions

In the face of increasing liberalisation of social and economic relations, trade unions and other forms of representation of working people can play a vital role in ensuring minimum wages and working conditions for all working people regardless of the legal basis for their employment. For this purpose it is necessary to make legislative changes, mainly the extension of the freedom of association and of the right to organise to people employed on the basis of civil law contracts and self-employed by enabling them to organise in trade unions and other representative organisations at their discretion. The reconstruction of the structure of collective labour relations is also needed and should be carried out by allowing union organisation associating people employed on different legal bases to exercise the competence of enterprise trade union at the level of company. Also, the model of representation, collective bargaining and solving collective disputes requires adaptation to the new challenges. The necessity for such changes has already been recognised by the Polish doctrine and court rulings and the legislative changes in this area are only a matter of time as a necessary consequence of the Constitutional Court’s ruling of 2 June 2015, which confirmed the incompatibility of statutory laws with the Polish Constitution and international law, and as a result of the recommendations of ILO experts of 2014. However, raising people’s legal awareness of their rights and of the advisability of exercising them is as important as the legislative amendments. Only in this way the altered institutions of collective labour law may attract the interest of their recipients and avoid the fate of workers’ councils, introduced to the Polish law under the Act on Informing and Consulting Employees of 07.04.2006 which, despite numerous powers, did not attract the interest of employees.

Summary

Many solutions for individual and collective labour law, which are currently in force in Poland, were established during the communist period and during the transition. As a result of the development of the legal system and socio-economic changes they do not meet the modern requirements of socio-economic development.

Noteworthy, in particular, is the personal scope of labour law. The authors point out that all work in accordance with Art. 24 of the Polish Constitution is under the protection of the law. Consequently, combining employment with the work of only those staff subordinated (art. 22 Polish Labour Code) seems too narrow. The problem of the personal scope of labour law is even more important when it is taken into consideration that in Poland more than 26% of the work is outside the employment relationship. Being covered by the provisions of the labour law is possible due to the established way of understanding the subordination of staff being abandoned, or removing subordination as a distinctive feature of worker status in favor of other criteria. These might include fixed performance of work for another person, the earning purpose of employment, and providing legal protection for persons who work under certain conditions. The authors consider methods of extending legal regulations applied to subordinate employees to date: through direct coverage of labour law to people providing jobs to those who are not subordinate, as well as those applied in references to labour law to the necessary extent, as is currently done in the case of, among others, contractors performing work in a cottage industry (Art. 304 (4) KP). The authors also evaluate the advantages and disadvantages of the methods mentioned above.

An important issue for the future of labour law is also the legal position of trade unions. The authors analyze two models of the organizational position of trade unions. The first is the model according to which unions operate primarily in the workplace, and their main powers are carried out by enterprise trade unions (as it is now in Poland). Regarding the second model, the organizational structure of trade unions is outside the workplace. Another important question that requires an answer is: who are represented by unions, their members or all employees? This is equivalent to the dilemma of choosing between the corporate model and the model of representation, which, in principle, we have to do under Polish labour law. Obviously, the choice of one of these competing model solutions involves important consequences, including the scope of entities covered by collective bargaining, the legal conditions of the right to strike, the legal character of autonomous legal acts which establishing involves trade unions, as well as the role non-union employee's representations.

Keywords: individual labour law, collective labour law, employment relationship, subordination of staff, collective bargaining, trade unions